

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY MICHAEL MOLDOWAN,

Plaintiff,

v.

Case Number 05-70331
Honorable David M. Lawson

CITY OF WARREN, MACOMB COUNTY,
ERIC SMITH, DONALD INGLES,
JOHN DOE Warren Police Officers
and Macomb County Prosecutors Office
Members, MICHAEL GEORGE SCHULTZ,

Defendants.

**ORDER APPOINTING GUARDIAN AD LITEM, DENYING DEFENDANT'S
MOTION TO SUBSTITUTE PARTY, AND CANCELLING HEARING**

This matter is before the Court on defendant Donald Ingles' motion to substitute Alice Ingles, Donald's temporary guardian, in place of Donald as a party defendant. The defendant states in his motion that he is presently the subject of guardianship proceedings questioning his mental competency in the St. Clair County Probate Court and that it is anticipated that Alice Ingles will be appointed his permanent guardian. The defendant states in his motion that Alice Ingles was appointed his temporary guardian. A hearing has been scheduled for September 12, 2011 in the St. Clair County Probate Court for the permanent appointment.

The defendant's motion to substitute parties was filed on August 15, 2011. The defendant requested and was granted leave to file documents under seal in support of the motion. Those documents were filed on August 18, 2011. The plaintiff has not responded to the motion and the time for doing so has passed. *See* E.D. Mich. LR 7.1(e)(1). The Court has reviewed the pleadings and motion papers and finds, despite the plaintiff's failure to respond, that the papers adequately set

forth the relevant facts and law and oral argument will not aid in the disposition of the motion. Therefore, it is **ORDERED** that the motion be decided on the papers submitted. *See* E.D. Mich. LR 7.1(f)(2).

Under Federal Rule of Civil Procedure 25(b), “[i]f a party becomes mentally incompetent, the court may, on motion, permit the action to be continued by or against the party’s representative.” *Ibid.* In this case, the state court has not yet determined the question of Donald Ingles’ competency or appointed a permanent guardian for him. A state court guardianship hearing is scheduled for September 12, 2011. The Court believes that substituting parties prior to a final guardianship determination by the state court is premature. If the state court were to appoint a guardian for the defendant at or after the September 12, 2011 hearing, the defendant might take further action to substitute parties at that time.

Under Federal Rule of Civil Procedure 17(c)(2), the Court “must appoint a guardian ad litem . . . to protect a minor or incompetent person who is unrepresented in an action.” *Ibid.* Here, in a document filed under seal, defendant Donald Ingles has provided the Court with a psychological evaluation describing his mental impairment, as well as a physician’s certificate stating that the defendant has been diagnosed with dementia, Alzheimer’s disease, and major depressive disorder with psychotic symptoms, and recommending that a guardian be appointed for the defendant. The defendant has also provided the Court with a statement from his wife discussing his mental condition. Finally, the defendant has furnished a state court order appointing a guardian ad litem for the defendant’s September 12, 2011 guardianship hearing. The information permits the Court to conclude that defendant Donald Ingles presently cannot represent his own interests. Therefore, the Court will appoint a guardian ad litem to appear on his behalf. The Court finds that the defendant’s

suggested representative, Alice Ingles, is capable of representing the defendant's interests and may serve as guardian ad litem in this matter.

Accordingly, it is **ORDERED** that the defendant's motion to substitute parties [dkt. #428] is **DENIED without prejudice**.

It is further **ORDERED** that the September 8, 2011 hearing on the defendant's motion to substitute parties [dkt. #428] is **CANCELLED**.

It is further **ORDERED** that Alice Ingles is **APPOINTED GUARDIAN AD LITEM** for defendant Donald Ingles.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 6, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 6, 2011.

s/Deborah R. Tofil
DEBORAH R. TOFIL